much greater than was demanded by the somewhat inadequate inspection. This stand of the court, though it rested in part on the fact that a state court had already held the law valid as far as it applied to domestic beer, seems to show a tendency toward a broader interpretation of the term "police powers," allowing the states to exercise more discretion in the control of the liquor trade.

CARRIER'S LIABILITY FOR DELAY CAUSED BY STRIKES. — The reasons of policy which underlie the common law rule that a carrier is liable for loss of goods unless caused by act of God or the public enemy do not hold where the action is for delay in delivery. The fear of collusion between the carrier and robbers which led Lord Mansfield to enunciate the doctrine that a carrier is an insurer,[1] had no application to delay, and a less strict rule of liability has therefore been applied. Where there is no express stipulation in the contract as to the time of delivery, a carrier is bound to deliver within a reasonable time under the circumstances, and where delay arises, the carrier is excused if it has exercised due diligence in the matter.[2] It would seem that this rule should apply to delays caused by strikes among its workmen, as it does to delays arising from other causes. In strikes unaccompanied with violence, a distinction must be made. If the strike is caused by a dispute as to wages, the carrier must pay whatever is necessary to retain its old employees or to obtain new ones to fill their places. It is under a public duty to run its trains regularly, and due diligence therefore requires it to forward its freight at the earliest possible moment without regard to cost.[3] But where it is unable, as in the case of a "sympathetic strike," to fill the places of its recusant employees at any advance in price, it should be excused for delay in the absence of negligence on its part.

A doctrine, however, has gained currency by repetition, though supported by only two decisions[4] (one since weakened by a limiting decision), to the effect that a carrier is liable absolutely for a delay which is caused by a strike unaccompanied with violence. These decisions proceed on the ground that the delay is caused by the misconduct of the carrier's agents, for which the former is liable under the doctrine of *respondeat superior*. They assume that a strike is always wrongful, which would negative the proposition that a man may, in the absence of agreement, terminate his employment when he wishes. But whether the strike is wrongful or not, how long can the acts of former employees impose liability upon their former principal? A principal is liable for the acts of its agents done in the usual course of their employment. But an employee by the very act of striking terminates his agency, so that he is no longer able, except under circumstances working an estoppel, to subject his principal to liability.[5] Consequently, there seems to be no reason for imposing upon the carrier a stricter liability than that which holds him to due diligence in avoiding delay.

When violence is present in a strike, however, the courts have worked

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[1] Forward *v.* Pittard, 1 T. R. 27.

[2] Geismer *v.* Lake Shore, etc., R. R. Co., 102 N. Y. 563; Pittsburg, etc., R. R. Co. *v.* Hollowell, 65 Ind. 188.

[3] People *v.* New York, etc., R. R. Co., 28 Hun (N. Y.) 543.

[4] Read *v.* St. Louis, etc., R. R. Co., 60 Mo. 199; Blackstock *v.* New York, etc., R. R. Co., 20 N. Y. 48; limited by Geismer *v.* Lake Shore, etc., R. R. Co., *supra*.

[5] Geismer *v.* Lake Shore, etc., R. R. Co., *supra*.

out a more logical result. As illustrated in a late case in the Texas Court of Civil Appeals, they hold that where a carrier uses all reasonable means to fill the places of striking workmen, and is prevented from forwarding freight only by the violent acts of the strikers, it is not liable for the delay. *Sterling* v. *St. Louis, etc., R. R. Co.*, 86 S. W. Rep. 655. Since the courts reach this result without adequately distinguishing the cases involving strikes without violence, it seems to constitute a tacit disapproval of the doctrine of those cases.

TROVER FOR CONVERTED MONEY. — The rule of law which allows the owner of stolen property to succeed in an action of trover against a *bona fide* purchaser for value [1] must be qualified by exceptions in the cases of money and negotiable securities payable to bearer. It seems in these cases to be accepted law that a *bona fide* transferee is not liable, either in trover or in any other form of action, provided that he has in the technical sense given value for the securities or money.[2] That the reason for the exception is obscure is evidenced by a recent decision of the Supreme Court of Indiana, which held, opposing the authorities, that where the maker of a note took it up with stolen money at a bank to which the payee's bank had forwarded it, the payee was liable in trover for the amount, though the money was received in ignorance of the theft, and the facts afforded evidence of value under the Indiana law. *Porter* v. *Roseman*, 74 N. E. Rep. 1105.

The well-established exception made in the case of money and securities has been usually based on the ground of public policy, — that it would be a very serious hindrance to the conduct of business if negotiable securities, and above all, money, did not carry a clear title to a *bona fide* transferee.[3] A more satisfactory line of reasoning, perhaps, is suggested by the theory of a German scholar, Prof. Heinrich Brunner, who argues that paper on its face payable to bearer, such as bank-notes and government certificates, passes title to its holder, who, by virtue of his very possession, being the bearer, becomes the legal owner, no matter how he may have come by the paper.[4] Though the theory is not in terms extended to coined money, the same must be true in that case, since the stamp of the government on a coin is a guarantee to the bearer, as such, of its value. If this is true, the action of trover would not be a proper one even against the thief. When, however, the bearer is a wrong-doer, he has in equity no right to keep either paper or coined money, and should be held a constructive trustee for the real owner. In allowing trover against the guilty holder of such a title, but denying redress against one who has acquired title in good faith, and is hence bound by no constructive trust, the courts seem unwittingly to have allowed an equitable remedy, with its characteristic equitable limitations, under the forms of a common law action.[5]

PRESUMED DEDICATION OF A JUS SPATIANDI. — The unorganized public as such is incapable of acquiring interests in realty by deed; consequently,

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[1] White *v.* Spettigue, 13 M. & W. 603.
[2] Nassau Bank *v.* National Bank of Newburgh, 159 N. Y. 456; Wheeler *v.* King, 35 Hun (N. Y.) 101.
[3] Miller *v.* Race, 1 Burr. 452. [4] 2 Endemann, Handbuch 163.
[5] *Cf.* cases cited in Ames, Cases on Trusts, 2d ed., 10, n. 2.